

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

NATHAN R. HOYE, )  
                        )  
Plaintiff,           )                           2:18-CV-01012  
                        )  
vs.                    )                           Judge Nora Barry Fischer  
                        )  
CAPT. MS FRANK,     )  
                        )  
Defendant.           )

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NATHAN HOYE,           )  
                        )  
Plaintiff,            )                           2:18-CV-01348  
                        )  
vs.                    )                           Judge Nora Barry Fischer  
                        )  
ALLEGHENY COUNTY JAIL,     )  
                        )  
Defendant.            )

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**MEMORANDUM ORDER**

The above two cases were referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72. In both cases, Plaintiff, Nathan Hoye, alleges that he is being denied a “cellie” for discriminatory reasons in violation of his Eighth Amendment rights.

On October 22, 2018, the Magistrate Judge issued a Report in each case recommending that the Motion for Leave to Proceed *in forma pauperis* be denied as Plaintiff had not satisfied the imminent danger exception to the three strikes rule of 28 U.S.C. § 1915(g). Plaintiff was

served with the Report and Recommendations at his listed address of record and advised that written objections were due by November 8, 2018. On November 7, 2018, the Report and Recommendations were returned unopened to the Court with the following notation on the envelopes: "RTS. Temp. Release." Upon inquiry, the Court was informed that Plaintiff had been transferred to Torrance State Hospital and was unable to file timely objections. On November 8, 2018, the Court sua sponte filed an Order granting Plaintiff an extension until December 10, 2018, to file written objections to the Report and Recommendations.

On December 4, 2018, the Court was informed that Plaintiff remained in custody at Torrance State Hospital. The cases were then statistically closed until such time as Plaintiff notified the Court of his return to Allegheny County Jail. On January 3, 2019, Plaintiff notified the Court that he had been returned to Allegheny County Jail. The cases were reopened and Plaintiff was granted an extension until January 24, 2019, to file his written objections. Presently before the Court are Plaintiff's objections to the Report and Recommendations which were filed on February 5, 2019.<sup>1</sup>

The objections before the Court do not address the recommendation of the Magistrate Judge. Rather, the objections, in toto, state only the following:

How can you abuse your authority and refuse to give me a cellie and say well he's black and young and out him. That's discrimination against the law my right being violated discrimination.

After a review of the pleadings and documents in these cases, together with the Report and Recommendations, and objections thereto, the Court finds that the Magistrate Judge made a sound recommendation. As the United States Court of Appeals for the Third Circuit has

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<sup>1</sup> The objections are not dated, but the envelope has a handwritten note of "1-15-19" on it. The Court will give Plaintiff the benefit of the prison mail box rule and deem the objections timely filed. Additionally, the Court notes that the objections are not signed.

instructed, a plaintiff must allege facts showing that he was in imminent danger at the time the complaint was filed. *Abdul-Akbar v. McKelvie*, 239 F.3d 307 (3d Cir.), *cert. denied*, 533 U.S. 953 (2001). Allegations of discrimination because one has been denied a “cellie” do not rise to the level of imminent danger. The following Order is entered:

The Motions for Leave to Proceed *in forma pauperis* are **DENIED**, and these actions are dismissed without prejudice to Plaintiff's right to reopen the cases by paying in each case the full statutory and administrative filing fees, totaling \$400.00. The Report and Recommendations of the Magistrate Judge, dated October 22, 2018, hereby are **ADOPTED** as the Opinion of the District Court.

**IT IS SO ORDERED** this 8th day of February, 2019.

/s Nora Barry Fischer  
Nora Barry Fischer  
United States District Judge

cc: NATHAN R. HOYE  
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